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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RICHARD H., Petitioner and Appellant, v. TASHA P., Respondent and Respondent.	D073673 (Super. Ct. No. D527285)

APPEAL from an order of the Superior Court of San Diego County, Darlene A. White, Commissioner. Affirmed.

Richard H., appellant, in pro per.

No appearance for respondent.

In this ongoing paternity action, petitioner Richard H. (Father) and respondent Tasha P. (Mother) filed concurrent requests for domestic violence restraining orders under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.).[1]

1 All statutory references are to the Family Code unless otherwise indicated.

After a hearing that consumed portions of several days, the family law commissioner granted Mother's request and denied Father's, specifically finding Mother's testimony credible. Father now appeals, challenging both the commissioner's jurisdiction and the substance of her ruling.

As we explain, we have been significantly hampered in this case by an inadequate record, briefing that fails to comply with the appellate rules, and the lack of a respondent's brief. To the extent possible we have sought to overcome these challenges by, among other things, taking judicial notice of the superior court file. Ultimately, we find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROND

Father filed this paternity action in 2011 with regard to the parties' as-yet unborn child. In August 2017, Mother filed a request for a domestic violence restraining order (DVRO) alleging physical threats, sexual abuse, and harassment. The court issued a temporary restraining order (TRO) and set the matter for hearing.[2] Father responded by filing his own DVRO request. The court again issued a TRO and set the hearing to coincide with the one on Mother's request.

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[2] This is the first of many instances in which appellant's appendix fails to include necessary documents. Although both Mother's and Father's petitions are in the appendix, only Father's TRO (issued September 18, 2017) is included. We take judicial notice of the contents of the superior court file, including Mother's TRO issued by Commissioner White on August 28, 2017. We denote documents from the superior court file we have taken judicial notice of with an asterisk (*).

That combined hearing began on October 13, 2017 and continued on October 17, 18, 20 and November 1. On the last day of the hearing, after nearly three hours of additional testimony and argument, the court granted Mother's request for a DVRO. The court specifically found that "[Mother's] testimony was credible." The DVRO was issued for a period of three years, with both Mother and the child listed as protected parties. Mother was given sole legal and physical custody, with Father allowed supervised visitation. Father was ordered to complete an eight-week anger management class.

DISCUSSION

Sensitive to the challenges faced by self-represented litigants on appeal, we nonetheless summarize some basic rules of the appellate process. We start with a presumption that the judgment or order being appealed is correct. (E.g., *Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.) It is the appellant's burden to show the contrary. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 978.) To demonstrate error, the appellant's brief must present a complete and coherent statement of the relevant facts, in the light most favorable to the judgment or order, supported by appropriate citations to the record. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658; Cal. Rules of Court, rule 8.204(a)(1)(C)[3].) The brief must also clearly articulate the appellant's legal arguments, accompanied by authority to support them. (Rule 8.204(a)(1)(B); *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.) As a corollary of these principles, it is the

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3 All subsequent rule references are to the California Rules of Court.

appellant's additional obligation to provide the court with a complete and unbiased record of the relevant proceedings sufficient to support any claims of error. (E.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

In this case we confront an appellate record prepared by appellant in the form of an appendix that omits numerous documents necessary to understand the order being appealed and the proceedings that led to it. Compounding these deficiencies, the appendix also includes documents that are not properly part of the record. This has necessitated our taking judicial notice of the entire four-volume superior court file.

The briefing likewise presents challenges. The opening brief offers a rambling statement of facts with few citations to the appendix to substantiate critical events. Much of the factual history seems to bear little relevance to the issues Father appears to be raising. To the extent legal principles are discussed, they are largely abstract and unconnected to specific facts of the case necessary to make them applicable. Finally, we have no respondent's brief that might assist us in understanding whether there are legitimate issues presented.

Although perhaps not required, we have reviewed the superior court file in light of the arguments raised by appellant, attempting as best we can to address his contentions.

1. *The Commissioner Was Authorized to Hear and Decide the Two DVRO Petitions*

Father asserts that Commissioner White should never have conducted the hearing on the reciprocal DVRO petitions. He makes two arguments in this regard. First, relying on this court's decision in *In re Marriage of Djulus* (2017) 10 Cal.App.5th 1042 (*Djulus*), he contends he never stipulated to the commissioner as required by the California Constitution. He also claims to have filed a peremptory challenge to the commissioner that should have been granted. (See Code Civ. Proc., § 170.6.)

Appellant's appendix includes a superior court form Stipulation for Court Commissioner to Act as Temporary Judge for All Purposes file stamped September 20, 2017. It is signed by Mother's attorney. No one signed on behalf of Father. In *Djulus*, this court explained that the agreement of the parties is necessary before a court commissioner can act as a temporary judge in a family law matter. While this agreement need not be express, we urged superior court commissioners to use a standard court form "at the *outset* of the cause, to obtain the parties' consent for the commissioner to hear and decide the cause *before* making any substantive rulings." (*Djulus, supra*, 10 Cal.App.5th at p. 1044.) Relying on the form he includes in his appendix, Father argues that he never agreed to the commissioner acting as a judge for all purposes in this case.

On October 30, 2017, in the midst of the ongoing DVRO hearing, Father's counsel filed an ex parte request for a continuance of the proceedings scheduled to resume on November 1. In the ex parte application* counsel raised the issue of Father's alleged

failure to stipulate by noting, "Petitioner did not stipulate to commissioner." But the court's order denying the application states, "Pet stip'd [*sic*] to commissioner on 9/26/16."

Although not included in appellant's appendix, the superior court file includes a form stipulation file-stamped September 26, 2016* and signed by Father's then-counsel stipulating to Commissioner White acting as a temporary judge for all purposes in the case. There is nothing we have located in the file indicating that Father ever withdrew his consent. To the extent the notation on the October 30, 2017 ex parte application could be construed as an attempt to do so, Father was not at liberty to cancel his stipulation in the middle of the hearing.

Father has also included in his appendix a copy of a form peremptory challenge under Code of Civil Procedure section 170.6 directed to the commissioner. His signature line is dated October 30, 2017, but there is no file stamp and no indication on the form that the request was ever ruled upon. We have reviewed the superior court file. There is no record that the request was ever filed. Even if it had been, it would have been untimely since the DVRO hearing began on October 13. (See Code Civ. Proc., § 170.6, subd. (a)(2) ["If the motion is directed to a hearing, other than the trial of a cause, the motion shall be made not later than the commencement of the hearing."].)

Accordingly, the commissioner was fully authorized to conduct the hearing and rule on the DVRO petitions.

2. *The Court Did Not Abuse Its Discretion in Granting Mother's Petition*

Aside from the commissioner's authority to preside over the hearing, Father contends the court abused its discretion in issuing a DVRO in response to Mother's

petition. He argues that the allegations of the petition were "vague and ambiguous" and did not "rise to the level of abuse or violence the recurrence of which would have to be prevented."

" 'The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. . . . It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.' " (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887, quoting *McCosker v. McCosker* (1954) 122 Cal.App.2d 498, 500.) "A party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable." (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

Father's failure to provide a fair summary of the evidence, in the light most favorable to the order, forfeits his challenge to the sufficiency of the evidence in support of the court's order. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738.) In any event, "abuse" under the DVPA "need not be actual infliction of physical injury or assault." (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 202.) It is broadly defined to include conduct that "plac[es] a person in reasonable apprehension of imminent serious bodily injury" (Fam. Code, § 6203) as well as "threatening" or "harassing" behavior or actions that "disturb[] the peace of the other party" (Fam. Code, § 6320). (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.) Here, Mother testified that Father engaged in

conduct a reasonable trier of fact could find would cause a reasonable person to feel physically threatened.[4] The court also cited disturbing and harassing phone and text messages that are not included as part of the record. Given that our standard of review does not permit us to reweigh the evidence, this would be more than sufficient to sustain the trial court's order.

DISPOSITION

The order is affirmed.

DATO, J.

WE CONCUR:

BENKE, Acting P. J.

GUERRERO, J.

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4 Mother testified that "what he did . . . made me feel physically threatened. . . . [W]e were arguing, and he was really angry, and he was in my face like this. And he had his hand back like this. And he was shaking and grinding his teeth. And then he was pitting [*sic*] his finger right in my face like that (indicating). And I was so scared that I froze."